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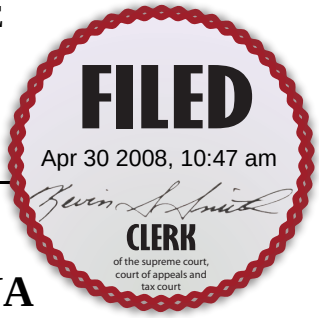

IN THE COURT OF APPEALS OF INDIANA

KEITH MYERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 85A02-0711-CV-999
	)	
WESLEY C. LEEDY,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen, III, Judge
Cause No. 85C01-0611-PL-596

April 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Keith Myers appeals the trial court's judgment in favor of Wesley C. Leedy. Myers raises one issue, which we restate as whether the trial court's conclusion that Leedy's interest in the property as a tenant survived the forfeiture of his landlord's land sale contract is clearly erroneous. We reverse and remand.

The relevant facts follow. In 2002, Myers entered into a land sale contract with Eli John Yoder for the sale of 200 acres in Fulton County, Indiana, to Yoder. The land sale contract gave possession of the "crop land" to Yoder "as soon as the crops growing thereon can be harvested or by March 1, 2003 which ever comes sooner." Appellant's Appendix at 29.

During 2004 and 2005, Yoder leased the crop land to Leedy. Myers was aware of the lease agreements between Yoder and Leedy. In December 2004, Myers filed a complaint against Yoder for breach of the land sale contract. At the end of the 2005 planting season, Yoder informed Leedy that he would not be able to lease the property for the 2006 planting season. In the fall of 2005, Leedy also had a discussion with Myers and told Myers that he would not be leasing the property for the 2006 planting season.

In February 2006, Yoder informed Leedy that "the legal matter" between Yoder and Myers had been settled and asked Leedy if he wanted to lease the property again. Transcript at 26. On March 1, 2006, Leedy entered into another lease agreement with Yoder. Leedy paid Yoder $100.00 per acre for 160 acres to rent the crop land for the "2006 crop year." Appellant's Appendix at 23. The lease "commence[d] immediately and [t]erminate[d] upon removal of the crops from the farm ground by [Leedy] in the fall

of 2006, or on December 31, 2006, whichever comes first." Id. Myers was unaware of the 2006 lease agreement between Yoder and Leedy.

On May 17, 2006, the litigation between Myers and Yoder was resolved when the trial court entered an order finding that Yoder was in default of the land sale contract, that forfeiture of Yoder's interest in the property was an appropriate remedy, and that Yoder's interests in the property were forfeited and "any lien, contract, or other interest [Yoder] may have had in the property [was] hereby extinguished." Id. at 38.

Leedy began farming the property on May 20, 2006, and planted approximately sixty acres of soybeans on that day. Myers then ordered Leedy off of the farm ground and instructed him to remove all of his equipment from the property. Myers rented the property to another party for $125.00 per acre.

Leedy filed a complaint against Myers for damages due to Myers's failure to allow Leedy to complete his farming of the property. Leedy claimed $36,760 in damages. After a bench trial, the trial court entered the following order:

> Judgment for [Leedy] is now entered, against [Myers], in the sum of $36,760.00. The Court arrives at this result regretfully in that it is quite clear [Myers] has suffered other tremendous financial loss as the result of the actions of John Yoder and [Myers] certainly didn't desire to see [Leedy] harmed in any way. Nonetheless, John Yoder had the right to cash rent the real estate in question to [Leedy] on March 1, 2006, as he did for two (2) years prior. The burden that created on the real estate survived the forfeiture of John Yoder's interest in May, 2006, and [Leedy] should have been allowed to finish planting and harvest his crop.

Appellant's Appendix at 9.

The issue is whether the trial court's conclusion that Leedy's interest in the property as a tenant survived the forfeiture of Yoder's land sale contract is clearly

erroneous. The trial court made limited sua sponte findings here.[1] Sua sponte findings control only as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. Id. When a court has made special findings of fact, we review sufficiency of the evidence using a two-step process. Id. First, we must determine whether the evidence supports the trial court's findings of fact. Id. Second, we must determine whether those findings of fact support the trial court's conclusions of law. Id.

Findings will only be set aside if they are clearly erroneous. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. Id.

On appeal, Myers argues that Leedy's lease did not survive the forfeiture because: (1) Myers did not have notice of the lease; (2) Leedy had notice of the forfeiture action; (3) the lease was an attempt by Yoder to convey a greater interest in the property than

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[1] Myers argues that the standard of review is that for findings of fact and conclusions thereon while Leedy argues that the standard of review is that for a general judgment. We conclude that the trial court made minimal findings and conclusions and, thus, the standard of review for findings of fact and conclusions thereon applies. However, because the findings and conclusions were sua sponte, a general judgment will control as to the issues upon which there are no findings.

Yoder had; and (4) Leedy's damages were caused by Yoder, not Myers. The trial court here made only two findings: (1) Yoder had the right to lease the property to Leedy on March 1, 2006; and (2) the lease survived the forfeiture of Yoder's interest in May 2006. While we agree that Yoder had the right to lease the property to Leedy in March 2006, we disagree that the lease survived the forfeiture action.

We begin by discussing the nature of a land sale contract. The Indiana Supreme Court has held that:

> Under a typical conditional land contract, the vendor retains legal title until the total contract price is paid by the vendee. Payments are generally made in periodic installments. Legal title does not vest in the vendee until the contract terms are satisfied, but equitable title vests in the vendee at the time the contract is consummated. When the parties enter into the contract, all incidents of ownership accrue to the vendee. Thompson v. Norton (1860), 14 Ind. 187. The vendee assumes the risk of loss and is the recipient of all appreciation in value. Thompson, supra. The vendee, as equitable owner, is responsible for taxes. Stark v. Kreyling (1934), 207 Ind. 128, 188 N.E. 680. The vendee has a sufficient interest in land so that upon sale of that interest, he holds a vendor's lien. Baldwin v. Siddons (1910), 46 Ind.App. 313, 90 N.E. 1055, 92 N.E. 349.
>
> This Court has held, consistent with the above notions of equitable ownership, that a land contract, once consummated constitutes a present sale and purchase. The vendor "has, in effect, exchanged his property for the unconditional obligation of the vendee, the performance of which is secured by the retention of the legal title." Stark v. Kreyling, supra, 207 Ind. at 135, 188 N.E. at 682. The Court, in effect, views a conditional land contract as a sale with a security interest in the form of legal title reserved by the vendor. Conceptually, therefore, the retention of the title by the vendor is the same as reserving a lien or mortgage. Realistically, vendor-vendee should be viewed as mortgagee-mortgagor. To conceive of the relationship in different terms is to pay homage to form over substance.

Skendzel v. Marshall, 261 Ind. 226, 234, 301 N.E.2d 641, 646 (1973), cert. denied, 415 U.S. 921, 94 S. Ct. 1421 (1974).

As noted in Skendzel, when Myers and Yoder entered into the contract, "all incidents of ownership" accrued to Yoder. Id. The land contract gave Yoder possession of the property and did not prohibit Yoder from leasing the property. At the time that Yoder entered into the final lease with Leedy, Yoder still had possession of the property and could enter into the lease agreement. Consequently, the trial court's conclusion that Yoder had the right to lease the property to Leedy on March 1, 2006, is not clearly erroneous.

We must next consider whether the lease agreement survived the forfeiture of Yoder's land contract. Generally, where a vendee to a land contract has defaulted, the vendor may institute an action for foreclosure or, under certain circumstances, forfeiture.[2] In Skendzel, the court held:

> Guided by the above principles we are compelled to conclude that judicial foreclosure of a land sale contract is in consonance with the notions of equity developed in American jurisprudence. A forfeiture [-] a strict foreclosure at common law - is often offensive to our concepts of justice and inimical to the principles of equity. This is not to suggest that a forfeiture is an inappropriate remedy for the breach of all land contracts. In the case of an abandoning, absconding vendee, forfeiture is a logical and equitable remedy. Forfeiture would also be appropriate where the vendee has paid a minimal amount on the contract at the time of default and seeks to retain possession while the vendor is paying taxes, insurance, and other

[2] "Forfeiture is defined as '[t]he divestiture of property without compensation' and '[t]he loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty.'" Armstrong v. Keene, 861 N.E.2d 1198, 1201 n.3 (Ind. Ct. App. 2007) (quoting BLACK'S LAW DICTIONARY 677 (8th ed. 2004)), reh'g denied, trans. denied. "In such circumstances, '[t]itle is instantaneously transferred to another, such as the government, a corporation, or a private person.'" Id.

> upkeep in order to preserve the premises. Of course, in this latter situation, the vendee will have acquired very little, if any, equity in the property. However, a court of equity must always approach forfeitures with great caution, being forever aware of the possibility of inequitable dispossession of property and exorbitant monetary loss. We are persuaded that forfeiture may only be appropriate under circumstances in which it is found to be consonant with notions of fairness and justice under the law.

Id. at 240-241, 301 N.E.2d at 650. Here, Myers brought a forfeiture action against Yoder after Yoder defaulted on the land sale contract, and the trial court granted forfeiture. Consequently, a formal foreclosure action was not brought.[3]

This brings us to the effect of the forfeiture upon Leedy's lease with Yoder. In general, a lease survives a conveyance of the property by the owner-landlord. See Ind. Code § 32-31-1-10 ("A conveyance by a landlord of real estate or of any interest in the real estate is valid without the attornment of the tenant. If the tenant pays rent to the landlord before the tenant receives notice of the conveyance, the rent paid to the landlord is good against the grantee."); Ind. Code § 32-31-1-13 ("An alienee of a lessor or lessee of land has the same legal remedies in relation to the land as the lessor or lessee."); Raco Corp. v. Acme-Goodrich, Inc., 126 Ind. App. 168, 174, 126 N.E.2d 262, 265 (1955) ("[A] purchaser [of property] is bound by all the equities which a tenant in possession can enforce against the vendor . . . ."), trans. denied; Swope v. Hopkins, 119 Ind. 125, 126, 21 N.E. 462, 462 (1889) ("By the sale and conveyance of the real estate to appellee, and the recognition of such sale and payment of the rent by appellants to the appellee, the

[3] Leedy implies that a forfeiture action was not allowed under the land sale contract. Appellee's Brief at 14. However, the trial court's order regarding forfeiture of the land sale contract is not the judgment before us on appeal.

appellants became the tenants of the appellee, but it did not change the nature of the tenancy, or give to the tenants any greater rights than those they otherwise had.").

Here, though, Yoder lost his interest in the property by the involuntary forfeiture of his land contract with Myers. Whether a lease between a tenant and vendee of a land sale contract survives a forfeiture action is an issue of first impression in Indiana. Thus, we look to other involuntary transfers of land for guidance. Generally, in a mortgage foreclosure action, the tenant of the property is named as a defendant in the foreclosure action and, unless the lease is senior to the mortgage, the lease does not survive the foreclosure action. See 52 C.J.S. Landlord and Tenant § 153 & 154 (2003). However, we have held that, where the tenant is not joined in the foreclosure action, the lease survives the foreclosure action. Como, Inc. v. Carson Square, Inc., 648 N.E.2d 1247, 1249 (Ind. Ct. App. 1995), affirmed by 689 N.E.2d 725 (Ind. 1997) (transfer deemed denied because the court was evenly divided and, therefore, affirmed). In the context of condemnation, a taking by eminent domain of all of the leased property for all of the lease term terminates the lease. P.C. Mgmt., Inc. v. Page Two, Inc., 573 N.E.2d 434, 437 (Ind. Ct. App. 1991), reh'g denied. Similarly, the Indiana Supreme Court has held that the tenant of an adverse possessor has no right to crops growing at the time of a judgment against the adverse possessor. Rowell v. Klein, 44 Ind. 290, 295-296, 1873 WL 5357 (1873).

Although Leedy was not named as a party to the forfeiture action, Myers argues that the 2006 lease was still terminated by the forfeiture judgment. Here, the forfeiture action was filed in December 2004, and the lease agreement at issue was not entered into

until March 2006. Myers argues that the lease did not survive the forfeiture action because Leedy was a *pendente lite* claimant and had notice of the action.[4]

In support of his argument, Myers relies upon Mid-West Federal Savings Bank v. Kerlin, 672 N.E.2d 82 (Ind. Ct. App. 1996), reh'g denied, trans. denied. The dispute in Kerlin was whether the Kerlins' judgment lien was extinguished by a mortgage foreclosure action. 672 N.E.2d at 83-84. The mortgage foreclosure action was initiated in March 1994, and the Kerlins' judgment lien attached to the property on April 5, 1994. Id. at 84, 86. Noting that "Indiana law holds that a prior mortgagee, at the time of filing the complaint to foreclose, who has either actual or constructive notice of a junior mortgagee, or other subsequent encumbrance, is bound to make the holder thereof a party to the action, or the proceedings therein will not affect him," we held that the mortgage company was not required to join the Kerlins in the litigation because they had no interest in the property at the time the complaint was filed. Id. at 85.

We then addressed whether the Kerlins' judgment lien was extinguished by the foreclosure sale. We discussed the doctrine of *lis pendens* as follows:

> Indiana adheres to the doctrine of *lis pendens*, which literally means "pending suit." 19 I.L.E. Lis Pendens § 1 (1959). At common law, lis pendens held that a person who acquired an interest in land during the pendency of an action concerning the title thereof had to take notice of such an action, and had to take the property subject to the judgment rendered in the action. See Wilson v. Hefflin, 81 Ind. 35, 41-42 (1881). Notice of the action arose from the commencement of the action itself. Id.

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[4] Leedy argues that Myers waived this issue by failing to raise it to the trial court. Myers correctly points out that he raised the issue of Leedy's notice in his affirmative defenses and that he raised this issue during the bench trial. Consequently, Myers has not waived this issue.

> This general rule was modified by Indiana Code § 34-1-4-2 [see now Ind. Code § 32-30-11-2] which requires that a separate written notice of a pending suit be filed with the clerk of the circuit court in order for the action to affect the interests of any *pendente lite* claimants. In Curry v. Orwig, 429 N.E.2d 268 (Ind. Ct. App. 1981), this court explained the theory behind the notice requirement of Indiana's *lis pendens* statute:
>
> > The purpose of *lis pendens* notice is to provide machinery whereby a person with an in rem claim to property *which is not otherwise recorded* or perfected may put his claim upon the public records, so that third persons dealing with the defendant . . . will have constructive notice of it.
>
> Id. at 273 (original emphasis).
>
> However, the statute does not require that such notice be filed if the action is founded upon "an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as by law required . . . ." Ind. Code § 34-1-4-2(a)(3)(A) [see now Ind. Code § 32-30-11-3(a)(3)]. In these instances, the commencement of the foreclosure action itself provides constructive notice to *pendente lite* claimants. Rothschild v. Leonhard, 33 Ind.App. 452, 460, 71 N.E. 673, 676 (Ind. Ct. App. 1904) (actions not within the statute remain subject to the common law rule); Schaffner v. Voss, 46 Ind.App. 551, 556, 93 N.E. 235, 237 (Ind. Ct. App. 1910).

Id. at 86-87.

We concluded that the Kerlins were *pendente lite* claimants because they acquired an interest in the property after the mortgage holder filed its foreclosure action. Because the foreclosure action was based upon a recorded mortgage, the mortgage holder was not required to file a notice of *lis pendens*. Id. at 87. "The filing of the suit itself served as constructive notice." Id. Although the Kerlins could have intervened in the action to assert their interest in the property, they did not do so and "their interest was extinguished by the foreclosure judgment." Id.

We find Kerlin instructive regarding *pendente lite* claimants. As in Kerlin, Myers was not required to file a *lis pendens* notice when he filed his forfeiture action. Because his deed and the land contract were properly recorded, the filing of his suit served as constructive notice to *pendente lite* claimants. Id.; Ind. Code § 32-30-11-3(a)(3). Consequently, Leedy had constructive notice of the forfeiture action when he entered into the 2006 lease with Yoder. We note that Leedy also had actual notice of the forfeiture action as he had been informed of the ownership dispute and legal action between Myers and Yoder. Despite this constructive and actual notice of the litigation, Leedy did not intervene in the action to protect his interest in the property as a result of his 2006 lease. As in Kerlin, Leedy's tenancy interest in the property was extinguished by the forfeiture judgment. Thus, the trial court's conclusion that the lease survived the forfeiture of Yoder's interest in May 2006 is clearly erroneous.[5] See, e.g., Miles Homes of Ind., Inc. v. Harrah Plumbing & Heating Serv. Co., Inc., 408 N.E.2d 597 (Ind. Ct. App. 1980) (holding that a mechanic's lien resulting from work requested by a land contract vendee was extinguished by a forfeiture action brought by the land contract vendor).

For the foregoing reasons, we reverse the trial court's judgment in favor of Leedy and remand for proceedings consistent with this opinion.

Reversed and remanded.

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[5] We note that Leedy relies, in part, upon Dorsett v. Gray, 98 Ind. 273, 1884 WL 5492 (1884), Shaffer v. Stevens, 143 Ind. 295, 42 N.E. 620 (1896), and Richardson v. Scroggham, 159 Ind. App. 400, 307 N.E.2d 80 (1974). We conclude that these cases are distinguishable because each of these cases concerns the rights of a tenant-farmer to harvest crops after the death of the life tenant-landlord. We note that the instant case does not concern the right to harvest crops and, further, Ind. Code § 32-31-1-18 now governs the rights of a tenant where the life tenant-landlord has died.

VAIDIK, J. concurs

BARNES, J. concurs in result with separate opinion

IN THE
COURT OF APPEALS OF INDIANA

KEITH MYERS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 85A02-0711-CV-999
	)	
WESLEY C. LEEDY	)	
	)	
Appellee.	)	

BARNES, Judge, concurring in result

I write to concur in result here because it is clear to me that Leedy had actual notice that Myers and Yoder were in conflict regarding the title to the property he was leasing. I would be more than hesitant to extend this holding to a set of facts where the lessee does not have such actual notice.

The clear majority rule is "that a lease is terminated by the foreclosure of a prior mortgage if, and only if, the tenants are made parties to the foreclosure proceedings . . . ." 52 C.J.S. Landlord and Tenant § 154 (2003) (emphasis added). See also Citizens Bank & Trust v. Brothers Constr. & Mfg., Inc., 859 P.2d 394, 396 (Kan. Ct. App. 1993); Davis v. Boyajian, Inc., 229 N.E.2d 116, 117 (Ohio Com. Pl. 1967); Dold Packing Corp.

v. N.L. Kaplan, Inc., 37 N.Y.S.2d 390, 394-95 (N.Y. Co. Ct. 1942). This court has followed this rule, although relying on due process analysis and not common law. See Como, Inc. v. Carson Square, Inc., 648 N.E.2d 1247, 1249 (Ind. Ct. App. 1995).

This case concerns a land sale contract, not a mortgage. Our supreme court, however, has clearly indicated that for most purposes, a land sale contract should be treated the same as a mortgage. See Skendzel v. Marshall, 261 Ind. 226, 234, 301 N.E.2d 641, 646 (1973), cert. denied. Thus, I see no reason why the rule generally requiring joinder of a lessee in a mortgage foreclosure action would not also apply to an action seeking termination of a land sale contract. Myers did not name Leedy as a defendant in the forfeiture action when it was filed in 2004, although Leedy apparently was leasing the property from Yoder at that time.

That said, this court has noted that the reason for requiring joinder of a lessee in a foreclosure suit is to allow the lessee an opportunity to respond, to take measures to protect its interests, and to lessen its damages. See Como, 648 N.E.2d at 1249. Leedy knew of the litigation between Myers and Yoder and could or should have taken steps to intervene in that litigation. Also, Leedy should not have taken Yoder's word that the litigation had been resolved before entering into the 2006 lease. Thus, I concur that the decision of the trial court ought to be reversed.